IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2283 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JOSHI SHAKUNTALABEN D/O.NANALAL KALYANRAM - Appellant(s)
Versus
DRIVER OF S.T.BUS & 1 - Defendant(s)

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Appearance :
MR BP DALAL for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
MS ROOPAL R PATEL for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 21/02/2007

ORAL JUDGMENT :

The original claimant has approached this Court to seek enhancement of the compensation. She had claimed Rs.1,00,000/- before the

Motor Accident Claims Tribunal (Aux.), Modasa by filing M.A.C. Petition No. 1087 of 1992. As against that, the Tribunal by its judgment and award dated 18/11/2000 has granted compensation of Rs.50,000/-with interest @ 12% p.a., and proportionate costs.

2. The accident in question took place on 14/11/1992. According to the appellant, on that day the driver of S.T. Bus bearing registration no. GJ-1 Z-2362 was reversing the bus without ascertaining that nobody was standing behind. In the process, the bus knocked down the appellant. She sustained serious injuries on her left leg. According to her, she did tailoring work and generated income to maintain her since she was not married. Because of the injuries she could not carry on the work and suffered economic loss. She, therefore, filed the aforesaid petition for obtaining compensation.

2.1. Respondents filed written statement at Exh. 17 and contested the claim. They denied all the averments made in the petition. The Claims Tribunal, on the basis of the material produced before it including overall evidence, held that respondent no. 1 – the driver of the bus was solely negligent and because of his negligence the accident occurred. The Tribunal also assessed the compensation which could be awarded to the appellant at Rs.50,000/-. Since in the opinion of the appellant, the quantum of compensation is inadequate, she has filed this appeal.

3. I have heard Mr. BP Dalal, learned advocate for the appellant and Ms. Rupal Patel, learned advocate for the respondents. Mr. Dalal has made submissions to make grievance regarding inadequacy of the compensation only under two heads, namely under the head of loss of prospective income and the Tribunal's overlooking of aspect of reduction in marriage prospects of the appellant. According to him, the Tribunal ought to have calculated the loss of income present as well as future on the basis of Rs.2,500/- per month, since the appellant's evidence on that count remained uncontroverted.

3.1. Ms. Patel has, however, supported the judgment and has submitted that overall compensation awarded by the Tribunal is just and proper and it requires no interference by this Court.

4. Having carefully considered the submissions of the learned advocates for the parties and having closely perused the record and proceedings of the case, it clearly appears that the appellant received injuries in a vehicular accident which occurred on 14/11/1992. The Tribunal after giving cogent reasons, has held that it was respondent no. 1, who was solely responsible for the accident. This finding has not been challenged by the respondents. I have also perused the reasoning of the Tribunal and I have found it to be legal and proper. This issue, therefore, stands concluded and there is no need to disturb it.

4.1. So far as the quantum of compensation is concerned, the Tribunal appears to have committed grievous error while deciding the quantum under the

head of loss of prospective income. The appellant had suffered permanent disability of 10% in respect of whole body. This fact is clearly stated in certificate at Exh. 35. There is no dispute on that count. The dispute is only on the count whether the income of the appellant assessed by the Tribunal is proper. According to Mr. Dalal, it ought to have been taken as Rs.2,500/- p.m.; whereas according to Ms. Patel, since the appellant had failed to produce any documentary evidence to substantiate her say regarding income, the Tribunal ought to have held that she did not earn any income. The fact remains that the Claims Tribunal has believed the version of the appellant to the extent that she was doing tailoring work and was generating some income. It has taken the income of the appellant at Rs.1,500/- per month. Since this finding is also not challenged by the respondents, it has become final, so far as it relates to the earning of the appellant. It is now to be seen whether she was earning Rs.1,500/- per month or more. Though there is oral evidence of the appellant to the effect that she was earning about Rs.2,500/- per month, keeping in view the exaggeration that may be made by the claimants in general, in my opinion, the income determined by the Tribunal at Rs.1,500/- per month is proper.

4.2. The next question that is required to be considered is whether the loss of prospective income can be calculated on the basis of this income alone i.e., in the manner the Tribunal has done. Obviously the Tribunal has committed error. It has completely ignored the fact that with the passage of time, the income would have increased and it would not have remained static

at Rs.1,500/- per month all throughout since she was in the business of tailoring. Applying the formula evolved in the decision of the Division Bench of this Court rendered in the case of Ritaben alias Vanitaben wd/o. Dipakbhai Haribhai v/s. Ahmedabad Municipal Transport Service reported in 1999 (1) G.L.R. p. 388, the prospective income of the appellant could be Rs.2,250/- per month. Considering 10% disability, the monthly loss would be Rs.225/- and the annual loss would be Rs.2,700/- and by applying multiplier of 15, the loss of prospective income would be Rs.40,500/-. The Tribunal has already awarded Rs.27000/-. The appellant is, therefore, entitled to receive Rs.13,500/- as additional compensation under this head.

4.3. So far as the second submission with regard to reduction in marriage prospects is concerned, it is an admitted fact that the appellant was at the time of accident aged 39 years. She was unmarried. She has not stated that in near future she was likely to get married. In view of the fact that after crossing the age of 40 years, such disability would hardly come in the way of a person if at all he or she intended to get married. In view of the same, on that count, no compensation is required to be awarded.

5. In view of the above, the appellant is entitled to receive Rs.13,500/- as additional compensation with interest @ 12% from the date of petition till realization with proportionate costs. The respondents are directed to deposit the aforesaid amount within four months from the date of this

judgment. Since the appellant was allowed to prosecute this appeal as an indigent person, necessary Court fees be deducted.

The result is that the appeal is partly allowed. Registry is directed to re-transmit the R & P to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.